

**TESTIMONY OF MARK DAVEY
ON BEHALF OF
FIDELITY NATIONAL INSURANCE COMPANY AND
THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA
BEFORE THE
HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES
ON
“THE NATIONAL FLOOD INSURANCE REFORM
AND MODERNIZATION ACT OF 2007”, H.R. 1682**

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My name is Mark Davey and I am President and Chief Executive Officer of Fidelity National Insurance Company. Fidelity National is a “Write-Your-Own” flood insurance partner with the National Flood Insurance Program and the largest writer, through this program, of flood insurance in the nation. Fidelity National is also a member of the Property Casualty Insurers Association of America, a trade association representing over 1,000 insurers that write more than 40 percent of all the property and casualty insurance in the United States.

Thank you for the opportunity to appear before you today on behalf of Fidelity National and PCI to comment on this important program and the reforms contained in “The National Flood Insurance Reform and Modernization Act of 2007, H.R. 1682.

Introduction

As the events of 2004 and 2005 have shown, the devastation caused by hurricanes and floods can impact millions of lives, businesses and our nation. Even as those hardest hit continue to recover from these events, scientists and meteorologists tell us we will continue to see more frequent and more severe storms for another 10 years or more.

The National Flood Insurance Program (NFIP) is a necessary public policy response to an uninsurable peril and should be continued. It has undergone significant changes throughout its roughly 40 year history and continues to provide vital protection to policyholders nationwide. However, the program as currently structured does not provide the level of protection needed by consumers and has not achieved the breadth of participation (i.e., the take-up rate) needed. Greater participation in the NFIP and program reforms are essential so that our nation can prepare for and respond to future catastrophic events. Fidelity National and PCI support proposals intended to achieve these goals, many of which are contained in H.R. 1682.

We commend the authors of H.R. 1682, Chairperson Waters, Ranking Member Biggert, and the Members of this Subcommittee for the important work being done to examine and improve the NFIP so that it may better serve all of our citizens. We believe this bill

is important to property owners, insurers, government and our nation and support, with some suggested changes, its passage.

Industry Reforms

We believe that there are several key issues that must be addressed to make the NFIP: 1) more responsive to purchasers, 2) fiscally responsible, and 3) to make sure that properties built or rebuilt are protected against future losses. There are numerous key elements that should be part of any reforms to the program and, thanks to the authors of the bill; most of them are contained in H.R. 1682. We believe the most important reforms are as follows and have identified those that have been addressed in the legislation being discussed today:

- We encourage Congress to forgive the outstanding debt incurred by the NFIP as a result of Hurricane Katrina and other recent events, which will ensure the NFIP has the ability to access funds when needed without constantly coming back to Congress (as was necessary in 2005 and 2006) to increase its borrowing authority, needlessly slowing the claims-paying process to those who need it most, those with flood claims.

We see that H.R. 1682 includes an increase (to \$21.5 billion) to pay for the outstanding claims in Section 11; however, we do not see relief for that debt. We believe that this is an important step toward moving forward. We also believe that steps should be taken to make sure the program charges appropriate premiums in order to lessen the possibility of future borrowing from the Treasury. However, that will most certainly happen shortly, should the \$20.775 billion (or more) debt-burden have to be repaid. According to testimony earlier this year, the NFIP collects roughly \$2 billion in premiums annually, the costs of the program, paying for events during these periods and the fact that the NFIP will need new loans about every six months to cover the annual interest alone, it is unlikely that the NFIP will ever be able to retire this debt.

- The program should be reauthorized on a long-term basis (e.g., for 10 years) as the current program will expire on September 30, 2008. This will ensure that there will be no gaps, such as occurred at the beginning of 2004, in making the protection available to purchasers and policyholders and provide for the smooth operation of the program. – This important extension does not appear in H.R. 1682.
- In order to reduce litigation which significantly raises operational costs for all stakeholders including the federal government, Congress should affirm federal court jurisdiction over all disputes relating to procurement of a policy and adjustment of claims under the NFIP. – Again, this reform does not appear in H.R. 1682 and it is an issue of vital importance to “Write-Your-Own” (WYO) insurers.
- The program should include revised and enhanced mitigation efforts such as adoption of a strong, statewide minimum building code, that considers all the risks of loss (including, for example, life safety and wind-borne debris for hurricanes) due to natural disasters and that cannot be weakened by local jurisdictions, as a condition for disaster assistance provided to a community.

We are happy to see that Section 15 of H.R. 1682 includes mitigation grants and addresses repetitive loss properties both of which are important reforms that should be retained, that we believe are vital to the program and that we very strongly support.

- Legislation reforming the program should provide additional federal funds to expedite completion of the Map Modernization initiative.

H.R. 1682, under Section 21 addresses this issue and we are very pleased to see that additional funds are to be appropriated for this purpose, as well as the re-establishment of the Technical Mapping Advisory Council to provide direction and assistance to FEMA as it continues this important update project.

- The program should expand the mandatory purchase requirement to include additional properties at risk, such as properties which have sustained a flood loss, are located behind a levee or other protective barrier, or are located within a specified distance from the coast or major body of water. Mandatory purchase requirements should not be limited only to those located in Special Hazard Flood Areas.

H.R. 1682 provides for a study of this issue in Section 3 and we believe that these properties, in the “natural floodplain” should be part of the mandatory purchase requirement of this important protection.

- The maximum coverage limits should be increased above current \$250,000/100,000 limits for residential property to accommodate increasing property values. The limits offered should facilitate replacing the average home based on today’s construction costs.

We are pleased that Section 7 of H.R. 1682 significantly increases these limits; however, since they have not been revised since 1994, even the amount of these increases may be inadequate and could still lead to problems following an event based on demand surge.

- The program should also include at least some coverage for additional living expenses and the option to insure all buildings to their replacement cost value.

Section 8 of H.R. 1682 includes limited coverage for additional living expenses, basement improvements, business interruption, and replacement cost of contents and we are pleased to see these included. However, the concern we have is with the myriad of options that would be available. One of the reforms the industry would like to see is a simplification of the rating process. The various options outlined in this bill would further complicate the rating process not simplify it, thus leading to more confusion for the agent and the policy purchaser. The program should establish a single, higher deductible and we should do whatever we can to make policy rating simpler and less cumbersome so agents can easily rate a policy accurately and consumers can understand the purchase. We are certainly willing to work with you on changes to these provisions.

- The Standard Flood Insurance Policy should be revised and rewritten to make it more consistent with standard homeowners and other property/casualty insurance products.

While there is a provision in H.R. 1682, Section 23, “Clarification of replacement cost provisions, forms and policy language” that requires a “one-page description of the policy using plain language and easy to understand terms and concepts”; we do not believe that this would address this issue. A form such as this was developed, as a result of Title II of the Flood Insurance Reform Act of 2004 (Public Law 108-264) and although that document is more than one page, it is going out to policyholders now. Creating yet another, shorter, summary document would be redundant and would only further confuse the policyholder.

- FEMA should change its disaster assistance procedures to make sure that those with flood insurance are paid ahead of those who have not purchased flood insurance. As an example, those without flood insurance were often provided funds from the federal government ahead of those who purchased the coverage, sending the wrong message to citizens and perhaps encouraging some to abandon the purchase of flood insurance in the future.
- The program should encourage lenders to establish escrow for flood policies outside the Special Hazard Flood Areas (SHFAs).

We are pleased that H.R. 1682 in Section 19, “Notice of availability of flood insurance and escrow in RESPA good faith estimate”, requires that the notice provide information on contacting the NFIP regarding the purchase of flood insurance. The industry would like to see this provision expanded to include a statement that says the purchaser can contact his or her insurance agent or the NFIP as well as have the ability to escrow funds for this purchase.

- The program should provide more educational materials and strengthen requirements for flood protection.

Once again, H.R. 1682 addresses this issue in a positive way in Section 14 as it provides for outreach programs to encourage more property owners and renters to purchase flood insurance.

Additional Comments on H.R. 1682

There are some specific additional comments that we would like to make regarding the provisions of H.R. 1682:

- We are pleased to see that Section 5. “Exception to waiting period for effective date of policies” fixes a problem that had been at issue for real estate closings and support this important change.
- Section 10. “Increase in annual limitation on premium increases” will allow the program to increase rates by a maximum of 15 percent per year instead of the current 10 percent, thus getting the NFIP to more appropriate, risk-based rates sooner, lessening the potential burden on taxpayers.

- Section 18. “GAO study of methods to increase flood insurance program participation by low-income families.” We are concerned with how eligibility, should such a program be recommended and implemented, would be determined as insurers do not collect income information, nor do we desire to do so.
- Section 25. “Extension of deadline for filing proof of loss”. The extension of the time period from the current 60 days to 180 days is entirely unnecessary. It will increase the potential costs to the program, limit the ability of the property owner, the WYO insurers and thus the NFIP, to mitigate the property from further damage and delay the repair process further. The ultimate costs of such an extension would be borne by the taxpayers and policyholders through increased premiums.

Conclusion

Again, thank you for the opportunity to present our views on this important legislation and we commend the Chair and the Members of this Subcommittee for holding this hearing to move this program forward.

In summary, it has been mentioned in the past, but it should be reinforced, that the National Flood Insurance Program provides important catastrophic protection for our nation’s property owners. While it needs significant reform, we are encouraged by the direction of this legislation and are willing to work with Chairperson Waters, Ranking Member Biggert, this Subcommittee and Congress to refine and obtain passage of this bill during this Congress.